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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/617,644 | 07/10/2003 | Jim K. Klavano | KLA101 | 4602 |

7590

07/27/2005

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| EXAMINER |
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STASHICK, ANTHONY D

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| ART UNIT | PAPER NUMBER |
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3728

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,644

Applicant(s)

KLAVANO, JIM K.

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-17 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>02052004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Sichak 4,192,086. Sichak '086 discloses all the limitations of the claims including the following: an insole 10 comprising a lower layer 12,13 made from open cell resilient material; the lower layer having a top surface and a relatively closed pore smooth bottom surface (see Figures 2, and 5-7); the lower layer impregnated with a foot-odor absorbing chemical (see col. 3, lines 58-61); an upper layer having a first surface and a second surface (see Figure 2); the second surface of the upper layer being attached to the top surface of the lower layer thereby forming a laminate (see Figures 2 and 5-7); the shape of the insole is complimentary to the innersole of shoes (See Figure 1); the smooth bottom surface of the lower layer rests on the inner sole of the footwear (typical of insoles); the insole expands and compresses (portion 13, see col. 4, lines 28-53) to force air in the sole to circulate to the odor absorbing chemicals (located in 12); the foot-odor absorbing chemical is activated charcoal (see col. 3, lines 58-61); the lower layer is composed of foamed plastic (see col. 4, lines 11-27); the upper layer and lower layer are attached by adhesive (heat sealed together, therefore by adhesive. See col. 4 lines 51-53); the layers are sewn together (see col. 5, lines 4-10).

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3. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Oakley 4,864,740. Oakley '740 discloses all the limitations of the claims including the following: (see Figure 3) an insole 2 comprising a lower layer 10, 12 made from open cell resilient material; the lower layer having a top surface and a relatively closed pore smooth bottom surface 12; the lower layer impregnated with a foot-odor absorbing chemical (see col. 3, lines 9-11); an upper layer 4 having a first surface and a second surface (see Figure 3); the second surface of the upper layer being attached to the top surface of the lower layer thereby forming a laminate (see col. 2, lines 52-60); the shape of the insole is complimentary to the innersole of shoes (see Figure 3); the smooth bottom surface of the lower layer rests on the inner sole of the footwear (typical placement of insoles in shoes); the insole expands and compresses to force air in the sole to circulate to the odor absorbing chemicals (known use of fragrance); the foot-odor absorbing chemical is activated charcoal (carbon); the upper and lower layers are fastened together by adhesive (see col. 2, lines 45-56).

Allowable Subject Matter

4. Claims 9-17 are allowed over the prior art of record.
5. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

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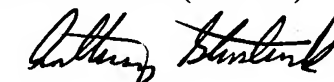
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561.

The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS